

House Bill 407

By: Representatives Drenner of the 85th, Powell of the 32nd, Buckner of the 137th, Frye of the 118th, and Henson of the 86th

A BILL TO BE ENTITLED
AN ACT

To amend Article 6 of Chapter 3 and Article 3 of Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to property owners' associations and covenants and warranties, respectively, so as to prohibit property owners' associations from creating or enforcing covenants which infringe upon a lot owner's right to install a solar energy device; to provide for a definition; to provide for exceptions; to provide for applicability; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Homeowners' Solar Bill of Rights."

SECTION 2.

Article 6 of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, relating to property owners' associations, is amended in Code Section 44-3-221, relating to definitions applicable to property owners' associations, by adding a new paragraph to read as follows:

"(19) 'Solar energy device' means equipment that uses solar radiation as a substitute for traditional energy for water heating, active and passive space heating and cooling, or generating electrical or mechanical power, as well as related equipment necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy."

SECTION 3.

Said article is further amended by adding a new Code section to read as follows:

"44-3-222.1.

(a) Except as otherwise provided in subsection (c) of this Code section, no association shall prohibit or restrict a lot owner from installing or maintaining a solar energy device on the lot owner's property.

(b) A provision in an instrument, or any subsidiary document adopted pursuant to an instrument, that violates subsection (a) of this Code section shall be void and unenforceable.

(c) An association may prohibit installation of a solar energy device that:

(1) As adjudicated by a court:

(A) Threatens the public health or safety;

(B) Violates a law; or

(C) Would conflict with a local ordinance adopted in conformity with Article 2 of Chapter 10 of this title;

(2) Is used for any purpose other than energy generation for consumption or passive heating and cooling by the lot owner;

(3) Is located on property owned or maintained by the association;

(4) Is located within a common area;

(5) Is located in an area on the lot owner's property other than:

(A) On the roof of the home or on the roof of another structure not prohibited by an instrument or other rules or regulations adopted pursuant to an instrument; or

(B) In a fenced yard or fenced patio screened from public view and located behind the home;

(6) If mounted on a roof:

(A) Extends higher than or beyond the highest point of the roof;

(B) Does not conform to the slope of the roof; or

(C) Has a frame, support bracket, or visible piping or wiring that is not in a silver, bronze, or black color or a color which matches the color of the roof; or

(7) If located in a fenced yard or fenced patio, extends higher than the fence line.

(d) No association shall require a permit or fee for the installation or continuous use of a solar energy device.

(e) This Code section shall apply to any instruments entered into or renewed on or after January 1, 2020, and to any rules or regulations adopted by an association on or after January 1, 2020."

SECTION 4.

Article 3 of Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to covenants and warranties, is amended by adding a new Code section to read as follows:

"44-5-60.1.

(a) As used in this Code section, the term 'solar energy device' means equipment that uses solar radiation as a substitute for traditional energy for water heating, active and passive space heating and cooling, or generating electrical or mechanical power, as well as related equipment necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

(b) Except as otherwise provided in subsection (d) of this Code section, no covenant running with the land shall prohibit or restrict a lot owner from installing or maintaining a solar energy device on the lot owner's property.

(c) A provision in an instrument, or any subsidiary document adopted pursuant to a covenant, that violates subsection (b) of this Code section shall be void and unenforceable.

(d) A homeowners' association established pursuant to a covenant running with the land may prohibit installation of a solar energy device that:

(1) As adjudicated by a court:

(A) Threatens the public health or safety;

(B) Violates a law; or

(C) Would conflict with a local ordinance adopted in conformity with Article 2 of Chapter 10 of this title;

(2) Is used for any purpose other than energy generation for consumption or passive heating and cooling by the lot owner;

(3) Is located on property owned or maintained by the association;

(4) Is located on a portion of the lot owner's property or structure that the homeowners' association is required to maintain;

(5) Is located in an area on the lot owner's property other than:

(A) On the roof of the home or on the roof of another structure not prohibited by an instrument or other rules or regulations adopted pursuant to an instrument; or

(B) In a fenced yard or fenced patio screened from public view and located behind the home;

(6) If mounted on a roof:

(A) Extends higher than or beyond the highest point of the roof;

(B) Does not conform to the slope of the roof; or

(C) Has a frame, support bracket, or visible piping or wiring that is not in a silver, bronze, or black color or a color which matches the color of the roof; or

(7) If located in a fenced yard or fenced patio, extends higher than the fence line.

(e) No homeowners' association shall require a permit or fee for the installation or continuous use of a solar energy device.

94 (f) This Code section shall apply to any covenants running with the land created for
95 subdivisions entered into as contemplated under subsection (d) of Code Section 44-5-60
96 and on or after January 1, 2020, and to any rules or regulations adopted by an association
97 on or after January 1, 2020."

98 **SECTION 5.**

99 All laws and parts of laws in conflict with this Act are repealed.